



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

ISCR Case No. 17-03971

Applicant for Security Clearance

Appearances

For Government: Allison Marie, Esq., Department Counsel

For Applicant: *Pro se*

11/28/2018

Decision

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant filed a Chapter 7 Bankruptcy petition in August 2017, which was discharged in November 2017. Additionally, she had two delinquent mortgage accounts that she abandoned. Resulting security concerns were not mitigated. Based upon a review of the pleadings, testimony, and exhibits, national security eligibility is denied.

History of Case

On April 13, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On December 15, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F: Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implemented June 8, 2017.

Applicant answered the SOR in writing on January 3, 2018 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to another administrative judge on July 19, 2018. DOHA issued a Notice of Hearing on July 25, 2018, setting the hearing for August 16, 2018, per Applicant's request. On July 26, 2018, the case was reassigned to me. The hearing proceeded as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 9 into evidence, without objection, and Hearing Exhibits I and II. Applicant offered Applicant Exhibits (AE) A through D, without objection. Applicant testified. DOHA received the hearing transcript (Tr.) on August 23, 2018. The record was left open for the submission of additional documentation. On September 5, 2018, Applicant submitted additional exhibits, which I marked as (AE) E through P. Department Counsel had no objections to AE E through P, and they were admitted. The record then closed.

Findings of Fact

Applicant is 64 years old. She is single and has no children. She is a high school graduate and has attended some college. She is employed as a security officer for a government contractor. She has worked as a security officer since 2003. She was granted a security clearance in 2007. She admitted filing a Chapter 7 Bankruptcy petition in August 2017, which was discharged in November 2017, but denied the mortgage accounts alleged in SOR ¶¶ 1.b and 1.c. (Answer; GE 1; GE 2; Tr. 33-37.) Applicant's admission is incorporated in the findings below.

In December 2005, Applicant purchased a house (Home 1) for \$367,000. She purchased it jointly with her cousin, and they were co-owners on the title. Her cousin did not have good credit and promised to refinance the mortgage in the cousin's name solely when she could obtain a loan. That did not occur. Instead, the purchase loan was refinanced in 2006, through two loans: a primary mortgage and a secondary mortgage. Applicant was listed as the primary borrower on both of the mortgages and her cousin was the co-signer. Applicant's first mortgage was financed by a Bank (Loan 1), and that mortgage called for interest-only payments for the first ten years of the loan. That loan is the subject of SOR ¶ 1.b, which was alleged to be delinquent in the amount of \$26,426 with a balance of \$320,704. She further financed the home with a second mortgage for approximately \$58,800, with a second creditor (Loan 2), which is the subject of SOR ¶ 1.c. It is alleged to be delinquent in the amount of \$59,318. Applicant lived in the house with her cousin and her cousin's daughter continuously beginning in 2005. She understood that she would be responsible for the loans should there be a problem. (GE 2; GE 3; Tr. 29-49.)

In 2012, she sought help from a home retention workshop and communicated via email with an "independent foreclosure review" enterprise. (AE J.) It is unclear from the record if she was experiencing financial difficulties at that time. However, she was unhappy with her living situation and wanted to move out. She testified that in 2014 she gave her cousin two-years notice that she would move out and would no longer pay the mortgages beginning in 2016. While her cousin was receiving social security disability

and had never contributed financially to the mortgage payments, Applicant wanted to move out and told her cousin that she would not pay further after she moved. (Tr. 47-73.)

In August 2016, just two months after the interest only payments on Loan 1 ceased and Applicant's monthly mortgage payments increased, Applicant stopped making payments on both mortgages. She claimed she thought her cousin was paying it, although she acknowledged that her cousin had never contributed to the mortgage before and previously had no plan to pay them. The same month that Applicant stopped paying the primary and secondary mortgage for Home 1, she purchased a second property (Home 2) for \$250,000. She then acquired approximately \$38,000 in credit-card debt for charges incurred to repair Home 2. She also purchased a used luxury vehicle for approximately \$18,500 in March 2017. (GE 2; GE 3; GE 7; Tr. 47-73.)

From August 2016 to June 2017, after her cousin failed to make any mortgage payments and the mortgages fell into default, Applicant tried to negotiate with the holder of Loan 1 to submit a deed in lieu of foreclosure on Home 1. Her negotiations on Loan 1 were not successful and she consulted an attorney. She was advised to file Chapter 7 Bankruptcy. On August 18, 2017, Applicant filed a Chapter 7 Bankruptcy petition. She listed \$640,652 in secured claims and \$38,015 in unsecured claims. The docket showed that the trustee abandoned \$487,778 in secured claims including the claim for Home 1. The Bankruptcy was discharged on November 28, 2017. (GE 4; AE A; AE E; AE F; AE G; AE H; AE I; Tr. 49-68.)

As a result of the abandonment of Home 1, the property was removed from the Bankruptcy. (GE 4; GE 9.) It was foreclosed and sold at auction on January 3, 2018. That sale was ratified in April 2018 (Loan 1). (GE 6 at 9; AE B; AE C.) Applicant claimed that she had no further liability for Loan 1 or Loan 2 after the foreclosure of the home. She presented a credit report that listed Loan 1 and Loan 2 with zero balances. A series of emails from her bankruptcy attorney that advised her she was "not responsible for the deficiency in the mortgage." (AE D; AE L.) Those emails do not distinguish between the two loans on Home 1, nor do they cite to any law to support that claim.¹

Applicant estimated her annual income in 2017 to be between \$80,000 and \$90,000. She has approximately \$2,500 in bank accounts. She is current on her two credit-card accounts. She participated in financial counseling, as required by the bankruptcy court. She learned to distinguish "between needs and wants." She testified that she has an unwritten budget. (Tr. 37, 78-82.)

¹ It is unclear from the record if Applicant has further liability with respect to Loan 2. When the property was abandoned by the trustee, Loan 2 would have been attached to that abandonment. According to Bank of America v. Caulkett, 135 S. Ct. 1995 (2015), Loan 2 could not be stripped off from the property and treated as an unsecured loan by the Bankruptcy court. Applicant did not meet her burden to explain how Loan 2 was resolved, if in fact it was.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 says that an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

As alleged in the SOR, Applicant was delinquent on two home mortgages, which have been past due since 2016. She was unwilling to resolve her financial obligations with respect to those loans. She also discharged multiple delinquent accounts through a 2017 Chapter 7 bankruptcy. These facts establish prima facie evidence for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted financial difficulties:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or

separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's recent financial decisions cast doubt on her judgment. Within the last two years, she defaulted on two loans and discharged debts through Chapter 7 bankruptcy. Her financial problems arose as a result of her choice to vacate the property she owned with her cousin and to intentionally stop paying on Loan 1 and Loan 2. She had no realistic expectations that her cousin would pay the mortgages on her own. Yet, she chose to abandon those financial obligations. She failed to demonstrate that her financial problems were due to factors beyond her control, and she did not present evidence that she acted responsibly under these circumstances. While she documented some attempts to address these debts in 2012 and again in 2016 by offering to voluntarily surrender the property to the creditor for Loan 1, these do not establish she was acting in good faith or responsibly. Applicant's choice to default on the Loan 1 and Loan 2 was part of a larger pattern of financial irresponsibility, including her excessive use of credit cards to repair Home 2, as well as the purchase of a used luxury vehicle. She has done little to show that similar circumstances are unlikely to occur. Mitigation was not established under AG ¶¶ 20(a) or 20(b).

Applicant participated in some financial counseling, and claimed to have a budget to help her responsibly manage her finances. Loan 1 was resolved through foreclosure. Despite that evidence, she failed to show that her financial problems are under control. It is unclear from the record whether or not she may still be held liable for Loan 2. She had the burden to present sufficient evidence of its status, and she did not meet that burden. Further, even if Loan 2 was found to be fully resolved, her financial decisions, the bankruptcy, and the loss of her property to foreclosure, reflect a poor financial track record and there are not clear indications her finances are under control. Accordingly, Applicant established limited mitigation of financial security concerns under the provisions of AG ¶¶ 20(c), 20(d), or 20(e).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who is accountable for her choices when she incurred substantial debt and did not repay it. She has not demonstrated responsible conduct under the circumstances. A determination cannot be made that her financial problems are unlikely to recur. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. Financial concerns remain, despite the presence of some mitigation including financial counseling. Overall, the evidence creates significant doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. She failed to meet her burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: **AGAINST APPLICANT**

Subparagraphs 1.a through 1.c: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is denied.

Jennifer Goldstein
Administrative Judge